

State of California



Fair Political Practices Commission

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October 26, 1984

Assemblyman Dan Hauser
State Capitol, Room 4134
Sacramento, CA 95814

Re: Advice Letter No. A-84-271

Dear Assemblyman Hauser:

You have asked this agency to review correspondence you have had with Edgar Lyon, Jr., Vice President of the Firemen's Fund Insurance Company. In that correspondence, you made the following proposal regarding your future employment by the company:

The main reason that I am writing now regards our continued relationship. As you are aware, at present I am on a leave of absence with Firemens Fund while serving the State Assembly. A number of my senior colleagues have suggested that I contact you to discuss a part time or contract consulting position. Many of the assembly members have maintained either business and profession interests (especially considering the legislative salary) and have done this quite successfully, while avoiding any conflicts. I would be available in the Sacramento area or on the North Coast to provide assistance and eventually actual claims handling, particularly during the interim in the Fall. Further at any time I could provide in depth material and research on changes in the law as it affects claims. A realistic compensation or contract would be at 50% my prior salary. I am very interested in looking into offers you might suggest that could be beneficial to both the company and yourself.

You have asked whether your proposal creates any potential conflict of interest problems under the Political Reform Act.

CONCLUSION

The proposal contained in your letter does not violate the conflict of interest provisions of the Political Reform Act.

Assemblyman Dan Hauser
October 26, 1984
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DISCUSSION

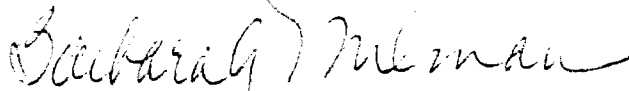
The Political Reform Act does not prohibit a public official from engaging in outside employment. The conflict of interest provisions of the Political Reform Act only address the decisions or actions made by a public official in his governmental capacity. Thus the only limits the Act places on you, as an Assembly Member, relate to decisions you make or participate in as a legislator.

If you were to accept employment with the Firemen's Fund Insurance Company, as proposed in your letter, you would be prohibited by Government Code Sections 87100 and 87103 from making, participating in, or using your official position to influence, a governmental decision only if it were reasonably foreseeable that the decision would have a material financial effect, different from the decision's effect on the public generally, on your employer, the Firemen's Fund Insurance Company. Under Commission regulations, 2 Cal. Adm. Code Section 18703, state legislation which affects all members of an entire industry -- such as the insurance industry -- in the same manner, does not affect any one member of the industry differently than it affects the "public generally." Therefore, even if you were employed by the Firemen's Fund Insurance Company, you, as a state legislator, could vote on bills affecting the insurance industry as a whole. However, you would be prohibited from voting on or in any other way participating in any bill which would affect the Firemen's Fund differently than other insurance companies.

Your letter to Mr. Lyon also mentions your ability to "provide in depth material and research on changes in the law as it affects claims." If you were employed by the Firemen's Fund, nothing in the Political Reform Act would prohibit you from using your resources as a legislator to provide information, including in-depth history and other background information, on new insurance laws. The only prohibition, as I pointed out above, would be against your voting on or otherwise participating in or influencing legislation which would affect the Firemen's Fund in a different manner than other insurance companies in the state.

I hope this has answered your questions.

Very truly yours,



Barbara A. Milman
General Counsel

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California
October 25, 1984

Honorable Dan Hauser
4134 State Capitol

Legislators: Conflict of Interest - #18966

Dear Mr. Hauser:

You have furnished us with copies of correspondence, including a letter, dated March 17, 1983, from you to Mr. Edgar Lyon, Jr., who was then Vice President of Firemens Fund Insurance Company. In that letter you stated the following:

"The main reason that I am writing now regards our continued relationship. As you are aware, at present I am on a leave of absence with Firemens Fund while serving the State Assembly. A number of my senior colleagues have suggested that I contact you to discuss a part time or contract consulting position. Many of the assembly members have maintained either business and profession interests (especially considering the legislative salary) and have done this quite successfully, while avoiding any conflicts. I would be available in the Sacramento area or on the North Coast to provide assistance and eventually actual claims handling, particularly during the interim in the Fall. Further at any time I could provide in depth material and research on changes in the law as it affects claims. A realistic compensation or contract would be at 50% of my prior salary."

You have asked whether the employment described in this letter to Mr. Lyon would have violated the conflict-of-interest provisions applicable to a legislator contained in the Code of Ethics (Article 2 (commencing with Section 8920) of Chapter 1 of Part 1 of

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DEPUTIES

Division 2 of Title 2 of the Government Code*) and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)).

The provisions in question do not generally prohibit a legislator from being otherwise employed while a legislator. Your employment per se with Firemens Fund therefore would not have been unlawful. Among other things, the Code of Ethics prohibits a legislator from receiving or agreeing to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California (para. (4), subd. (b), Sec. 8920). In pertinent part, the Political Reform Act provides that no public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest (Sec. 87100).

In your letter you state:

"I would be available in the Sacramento area or on the North Coast to provide assistance and eventually actual claims handling, particularly during the interim in the Fall. Further at any time I could provide in depth material and research on changes in the law as it affects claims. A realistic compensation or contract would be at 50% of my prior salary."

In our opinion, the employment contemplated by this statement would not have violated the Code of Ethics because it would not have constituted an agreement to receive, directly or indirectly, any compensation, reward, or gift for service, advice or assistance or other matter related to the legislative process (para. (4), subd. (b), Sec. 8920). Instead, you offered to serve as a claims representative and consultant on behalf of the company. In that connection, you further offered to provide material and research regarding changes in the law in that field. Actual changes in the law (e.g., enactments) are not part of the "legislative process," but the end product of that process. Introducing, supporting, or opposing a bill would be examples of actions within the legislative process that would be proscribed if performed for compensation. There is nothing in your letter which implies that you would use your official position as a legislator to influence any decision favorable to Firemens Fund, or any other person or entity, in violation of the Political Reform Act of 1974.

* All further code references are to the Government Code.

In summary, we think that the concerns addressed by both the Code of Ethics and the Political Reform Act of 1974 are those inherent in allowing outside financial interests to influence the legislative decision-making process. There is nothing in your letter suggesting that the legislative decision-making process would be affected in any way by the described employment.

Therefore, we conclude that the employment described therein would not have violated the applicable conflict-of-interest provisions.

Very truly yours,

Bion M. Gregory
Legislative Counsel

A handwritten signature in cursive script that reads "Christopher Zirkle".

By
Christopher Zirkle
Deputy Legislative Counsel

CZ:sms

October 24, 1984

Edgar H. Lyon
P. O. Box 20128
Oakland, CA 94620-0128

Dear Mr. Lyon:

I am in receipt of your letter of October 22, 1984. Jurisdiction over matters relating to possible ethical violations by state legislators lies both with the Joint Legislative Ethics Committee and with the District Attorney "of the county in which the alleged violation occurred" (Government Code Section 8945-d-).

As the letter in question was apparently sent from the state capitol, jurisdiction over any possible criminal violation would be the responsibility of the Sacramento County District Attorney.

I have taken the liberty of forwarding these materials to each agency and I assume they will respond to you regarding their action or need for additional information.

Thank you for your inquiry.

Very truly yours,

Terry Farmer
District Attorney

Enclosure

October 24, 1984

Assemblyman Bill Lancaster
Chairman, Joint Legislative Ethics Committee
Room 5158
State Capitol
Sacramento, CA 95814

RE: Letter of Edgar H. Lyon and enclosure

Dear Assemblyman Lancaster:

Enclosed please find a copy of a letter and accompanying enclosure received from Edgar H. Lyon as well as related correspondence from me regarding the matter. I would appreciate your response to Mr. Lyon regarding his inquiry.

As the letter in question was apparently sent from the capitol, I have also sent a copy of these materials to Sacramento County District Attorney John Dougherty for his review.

Your attention to this matter is appreciated.

Very truly yours,

Terry Farmer
District Attorney

Enclosures

October 24, 1984

John Dougherty
District Attorney
County of Sacramento
P. O. Box 749
Sacramento, CA 95814

PERSONAL & CONFIDENTIAL

Dear John:

Enclosed please find, pursuant to our telephone conversation, correspondence relating to the issue of Assemblyman Hauser's letter of March 17, 1983 to the Firemens Fund Insurance Company.

As the letter appears to have emanated from the capitol, venue for any criminal prosecution which might ensue would appear to be in Sacramento County.

Thank you for your consideration of this matter.

Very truly yours,

Terry Farmer
District Attorney

Enclosure

October 22, 1984

Hon. Terry Farmer
District Attorney
County of Humboldt
County Courthouse
Eureka, CA 95501

Dear Sir:

Enclosed is a copy of a letter sent to me by Assemblyman Dan Hauser when I was still active in business and in charge of the Northern Coast operations. In my 36 years with the company I have never seen such a request of this unusual nature from a public servant.

Frankly, Mr. Farmer, I am somewhat disturbed by the content and context of this letter. Since the writer is a resident of Humboldt County, I felt it should be referred to you as the district attorney to determine whether or not any improprieties exist.

Having known the writer for over 15 years, it is hard for me to believe that he would knowingly write such a request if he felt there were the slightest possibility of an illegal action. It would almost appear that he imprudently acted upon the very poor advice of someone senior in that legislative body.

I purposely did not do anything with this letter while still active with the company. However, now that I have retired I do not feel any such constraint in seeking your opinion. I would appreciate your comments on the subject matter.

Very truly yours,

Edgar H. Lyon
P. O. Box 20128
Oakland, CA 94620-028

cc Dan Walsh

March 17, 1983

Mr. Edgar Lyon, Jr., Vice President
Firemens Fund Insurance Company
P. O. Box 3136
San Francisco, CA 95404

Dear Bud:

I'm sorry that I have not had the opportunity to talk to you since the election. I especially want to thank you and Firemens Fund for all the support, assistance and patience during the entire campaign.

The main reason that I am writing now regards our continued relationship. As you are aware, at present I am on a leave of absence with Firemens Fund while serving the State Assembly. A number of my senior colleagues have suggested that I contact you to discuss a part time or contract consulting position. Many of the assembly members have maintained either business and profession interests (especially considering the legislative salary) and have done this quite successfully, while avoiding any conflicts. I would be available in the Sacramento area or on the North Coast to provide assistance and eventually actual claims handling, particularly during the interim in the Fall. Further at any time I could provide in depth material and research on changes in the law as it affects claims. A realistic compensation or contract would be at 50% my prior salary. I am very interested in looking into any offers you might suggest that could be beneficial to both the company and yourself.

I look forward to hearing from you soon and I am also looking forward to seeing you at the Humbolt County Association meeting in May.

Sincerely

Dan Hauser

cc. G. Mitchell Wilk
governmental affairs